

COUNTY COURTS:
SCHOOL FUNDS:
MANAGEMENT OF LANDS PUR-
CHASED UNDER FORECLOSURE:

County courts may lease, rent, or
manage lands purchased under fore-
closure of school fund mortgages
and shall sell the same at earliest
date practicable.

October 10, 1938



Hon. Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

This is in reply to yours of recent date request-
ing an official opinion from this department based upon
the following letter:

"Will you please give me an opinion as
soon as convenient on this proposition:

"The County Court owns a piece of property
which they were compelled to purchase
under a School Fund mortgage foreclosure.
Does the County Court have the authority
to permit Fair Building to be erected on
this ground? There would be no additional
expense or money which the County Court
would advance. The land would be improved
with sewer and water mains and the property
would be more valuable to the County Court
after such improvements than it would be-
fore. The title at all times is to remain
in the County Court. Should the County
Court be compelled to dispose of this
property without these improvements it
would be compelled to do so at a loss.

"We are still making every effort to put
this Fair proposition across here and it
seems that this might be the only way that
we can do so without involving the County
Court. I will appreciate your opinion at
your earliest convenience."

From your request, it appears that the county court has become possessed of certain lands under foreclosure of school fund mortgages by virtue of the provisions of Section 9256, R. S. Mo. 1929, which is as follows:

"Whenever any property heretofore or hereafter conveyed in trust or mortgaged to secure the payment of a loan of school funds shall be ordered to be sold under the provisions of this chapter, or by virtue of any power in such conveyance in trust or mortgage contained, the county court having the care and management of the school fund or funds out of which such loan was made may, in its discretion, for the protection of the interest of the schools, become, through its agent thereto duly authorized, a bidder, on behalf of its county, at the sale of such property as aforesaid, and may purchase, take, hold and manage for said county, to the use of the township out of the school fund of which such loan was made, or in its own name where such loan has been made out of the general school funds, the property it may acquire at such sale aforesaid. The county court of any county holding property acquired as aforesaid may appoint an agent to take charge of, rent out or lease or otherwise manage the same, under the direction of said court; but as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, such property shall be resold in such manner and on such terms, at public or private sale, as said court may deem best for the interest of said school or schools; and the money realized on such sale, after the payment of the necessary expense thereof, shall become part of the school fund out of which the original loan was made."

In discussing the relation of the county court to the school funds and its powers and duties in relation thereto, the court in the case of Ray County, to the use of the Common School Fund v. Bentley et al., 49 Mo. 1. c. 242, said:

"* * * The county is not the owner of the fund; the title is simply vested in it as trustee, for convenience, to carry out the policy devised by the law-making power for the appropriation and distribution of the fund. In the care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source.
* * *."

And in the case of Morrow v. Pike Co., 189 Mo. 610, 1. c. 622, Judge Lamm in his opinion on this question, said:

"* * * the public school fund does not belong to the county in a technical sense. It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund * * *."

When the Ray County case, supra, was in court the county court was not authorized to purchase lands at foreclosure sales of school fund mortgages, but Section 9256, supra, authorizes such purchase for the protection

of the school fund. However, this section provides that when the county court makes such a purchase, it may appoint an agent to rent out, lease or otherwise manage such land, in the discretion of the court. This section requires the court to sell the land as soon as practicable when in the judgment of the court it would be advantageous to the school districts interested in the fund which has been invested in the land. By this provision the lawmakers have not intended that the county court hold the land any longer than it can sell it at a price which would be advantageous to the districts.

Your letter indicates that it is the intention of the county court, if permissible, to authorize the Fair Association to erect buildings on the school lands purchased by the county court under foreclosure of school fund mortgages. This seems to be an arrangement which is more or less permanent in nature, and unless such a plan is only temporary, the court would not be authorized to rent or lease the lands for that purpose because it would interfere with the court in its duties of selling this land as soon as practicable when in the judgment of the court it would be advantageous to the school districts to which the land belongs.

CONCLUSION

Since the buildings which the Fair Association desires to erect on the school lands are not temporary structures, we are of the opinion that the county court would not have authority to lease or rent such lands to the Fair Association for that purpose. By Section 9256, supra, it is the duty of the court to dispose of this land at the earliest date practicable and advantageous to the school districts owning the land. Such a contract with the Fair Association would interfere with the early disposition of the land and would be illegal, we think.

Respectfully submitted

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Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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